

# Kluwer Mediation Blog

## Dividing the Child: Best Practices in Child Custody Mediation

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With all the surrounding pomp and pageantry particularly in the African culture, seating through a wedding ceremony by couple could be quite splendid. Optimisms are usually high as couple fantasize about a future of possibilities for each other and their children. In contrast, seating through a child custody legal battle can be quite horrific as once loving couple pull out every dirty linen in their closet, and every weapon in their armoury to gain control of the children of the marriage. Like the Biblical story in King Solomon's days, the end result may be the death of the child where the sword of litigation cuts in two the child as a means to 'justice'. This result is however not usually the desire of either parent who deep down in their hearts may want the best for the child, but regret its impossibility in the heat of passion and acrimony of courtroom litigation.

Today's legal system is recognizing this fact and thus encouraging alternative methods of resolving child custody component of matrimonial dissolutions. This fact is evident in many jurisdictions which now make mediation the mandatory process for child custody cases. The aim of child custody mediation essentially includes:

- a. Encouraging and empowering the separating parents to make decisions that meets the best interest of the children;
- b. Reducing the emotional trauma associated with child custody litigations;
- c. Reducing the financial costs associated with child custody matters;
- d. Increasing the chances of wholesome development of children entangled in a separation process; and
- e. Promote healthy communication among the separating parents on issues relating to the welfare of the children entangled in the separation proceedings.

Custody proceedings, as earlier indicated, are usually high tension and this is not unconnected to the fact that the parents are also undergoing the pressure and challenge of a separation. It is therefore necessary that in bringing them into a mediation session, a pre-mediation or orientation session is held where they are basically counselled on the process of child custody mediation and the need for healthy communication despite their differences. It may be necessary to engage the services of a psychologist who may be better suited for this counselling. In order for child custody mediation to succeed, it is imperative that the parties have confidence in the mediator with respect to both integrity and competence. This is why a list of mediators is, in some jurisdictions, presented to the parties to make a choice. Mediators are also screened by the appointing centre to ensure there is no case or possibility of bias. Mediators are also encouraged to disclose any existing or arising issue that may taint their position of neutrality in the process and where necessary

withdraw from serving as mediators in that case.

The mediator's role in the process of the child custody session is primarily to facilitate communication among the parties and keeping them in line with the focus of the process i.e. to determine and implement what is the best interest of the child. The mediator must never by any means coerce parties into a decision as such decisions are unlikely to stand the test of time and such practice is unethical for a mediator. The mediator may however ask heart searching questions bordering on issues relevant to determining the best interest of the child. These may include: which process or parent offers the best chance of stability to the child/children economically, health wise and psychologically. In determining this or similar questions, mediator may focus parties' attention on work schedules, plans for the child and plans for a future relationship. Where the children are grown up enough to be a part of the process, questions of preference may be put to them in private and attempts made to address such concerns as much as possible.

In addition to strict observance of confidentiality rule, given the legal issues associated with the child custody process, the mediator must also have a knowledge of family law and customs in the jurisdiction in question. However, it must be made clear that couple are free to seek legal advice on these issues and the mediator's advice must be restricted to ensuring that the Parenting Agreement reached at the end of the process is legal and enforceable. The mediator may also assist the parties in drafting the Parenting Agreement in terms which best express the parties' intention.

This process remains one of the most emotional sapping areas of mediation practice and it is hoped that this helps!

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